



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/789,792

02/27/2004

Jean-Manuel Gomes

R029

9458

26158

7590

06/16/2006

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

ATTN: PATENT DOCKETING 32ND FLOOR

P.O. BOX 7037

ATLANTA, GA 30357-0037

EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/789,792

Applicant(s)

GOMES ET AL.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41-81 is/are pending in the application.
- 4a) Of the above claim(s) 48-56, 68-71 and 78-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41, 58-64, 72, 74 and 75 is/are rejected.
- 7) ☒ Claim(s) 42-47, 57, 65-67, 73, 76, 77 and 81 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20050317, 20051017.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, figs. 1-4 in the reply filed on 02 March 2006 is acknowledged. Claims 48-56, 68-71 and 78-80 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 41, 61 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Lingamfelter '293. Lingamfelter discloses a carton including a bottom tear line formed by the central portion of line 12A which is spaced above the bottom that is at least sufficient to restrain the containers in the bottom row from rolling out of the carton, a first side tear line formed by one end portion of the tear line 12A and extending diagonally through a first side panel and defining a first end retainer (i.e. the portion of the end wall immediately therebelow) which prevents the containers in the row immediately above the bottom row from rolling out, a second tear line formed by the other end portion of the tear line 12A and extending diagonally through a second side panel and defining a second end retainer (i.e. the portion of the end wall immediately therebelow) which also prevents the containers in the row immediately above the bottom row from rolling out and a top tear line 12E as claimed.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 58-60, 63 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lingamfelter '293 in view of Bates '083. With respect to claims 58-60 and 75, Lingamfelter '293 discloses all structure of the claimed carton except formation of the first end from four flaps attached to the bottom, top and side panels. Bates '083 teaches that it is known to make a can carton with ends formed by four end flaps. It would have been obvious to make the container of Lingamfelter '293 using four end flaps to form the ends as taught by Bates '083 to provide secure ends to the carton. Four flap end closures on cartons are notoriously well known in this art. With respect to claim 63, Lingamfelter '293 discloses all structure of the claimed carton except formation of the carton from paperboard. Bates '083 teaches that it is known to make cartons from paperboard. It would have been obvious to make the carton of Lingamfelter '293 using paperboard as taught by Bates '083 since paperboard provides good rigidity and support while being relatively cheap as compared to other types of carton material. Paperboard is notoriously well known in this art.

6. Claims 64 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lingamfelter '293 in view of Bates '313. Lingamfelter '293 discloses all structure of the claimed carton except a bottom fold line on the dispenser flap. Bates '313 teaches that it is known to make a carton dispenser flap with a bottom fold line to facilitate forming an outward

trough to receive a top end can of the carton upon initial opening. It would have been obvious to make the carton dispenser flap of Lingamfelter '293 with a bottom fold line as taught by Bates '313 to allow retention of the endmost can during use.

7. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 64 above, and further in view of Bates '083. Modified Lingamfelter '293 evidences all structure of the claimed carton except formation of the first end from four flaps attached to the bottom, top and side panels. Bates '083 teaches that it is known to make a can carton with ends formed by four end flaps. It would have been obvious to make the container of Lingamfelter '293 using four end flaps to form the ends as taught by Bates '083 to provide secure ends to the carton.

8. Claims 41, 58-64, 72, 74 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrelson '487 in view of Lingamfelter '293. Harrelson '487 discloses all structure of the claimed carton except formation of side tear lines that extend through the first and second side panels. Lingamfelter '293 teaches that it is known to make a tear out section of a can carton by extending the tear lines straight through the side panels to provide open side sections within the dispensing opening. It would have been obvious to extend the tear lines forming tear out section in Harrelson '487 through the side panels as taught by Lingamfelter '293 to provide easier access to the cans.

***Allowable Subject Matter***

9. Claims 42-47, 57, 65-67, 73, 76, 77 and 81 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

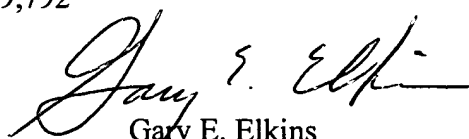
Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

Application/Control Number: 10/789,792

Page 6

Art Unit: 3727

A handwritten signature in cursive script, appearing to read "Gary E. Elkins".

Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
12 June 2006